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JS-6

United States District Court  
Central District of California

MALLIKA "JAZMIN" SINGH,  
Plaintiff,

v.  
YASMIN NANAYAKKARA; NALIN  
NANAYAKKARA; DAMAYANTHI  
NANAYAKKARA; SANDY GREWAL;  
WHITNEY MILINO; RANGI PERERA;  
FADI RASHEED; ROBERT VERDI;  
FINGERPRINT COMMUNICATIONS,  
LLC; Y JEWELS, LLD; and DOES 1-50,  
Defendants.

Case No. 2:13-cv-09220-ODW (ASx)

**ORDER DENYING DEFENDANTS'  
MOTION TO DISMISS FIRST  
AMENDED COMPLAINT [14] AND  
REMANDING CASE TO LOS  
ANGELES COUNTY SUPERIOR  
COURT**

**I. INTRODUCTION**

This case has presented a jurisdictional puzzle for the Court to solve. Defendants removed this action from Los Angeles County Superior Court on the basis of federal-question jurisdiction, arguing that the Copyright Act completely preempts certain state-law claims in Plaintiff's original Complaint. Removal on this basis is often controversial and hotly disputed, but no motion for remand was filed. Instead,

1 shortly after removal and before the Court even had the opportunity to assess subject-  
 2 matter jurisdiction on its own, Plaintiff filed a First Amended Complaint (“FAC”).  
 3 The FAC eliminates a number of claims but keeps two state-law claims that  
 4 Defendants contend are completely preempted. Defendants now move to dismiss  
 5 Plaintiff’s FAC on several grounds. Because the Court finds that the Copyright Act  
 6 does not preempt any of Plaintiff’s claims, the Court **DENIES IN PART** Defendants’  
 7 Motion to Dismiss First Amended Complaint on the merits, **DENIES AS MOOT** the  
 8 remainder of the Motion, and **REMANDS** this action to Los Angeles County Superior  
 9 Court.<sup>1</sup>

## 10           **II. FACTUAL BACKGROUND**

11 Plaintiff Mallika “Jazmin” Singh initiated this action in Los Angeles County  
 12 Superior Court on November 13, 2013. (*See* Not. of Removal, Ex. 1.) The Complaint  
 13 contained nineteen claims premised on state and common law—including fraud,  
 14 breach of contract, professional malpractice, and conversion. (*Id.*) The suit arises out  
 15 of a failed partnership to design, manufacture, and sell South Asian inspired jewelry.  
 16 (*Id.*)

17 On December 16, 2013, Defendants removed this action to federal court on the  
 18 basis of federal-question jurisdiction. (Not. of Removal ¶¶ 10–15.) Defendants’  
 19 contend that the complete-preemption doctrine applies to several of Plaintiff’s claims  
 20 in the Complaint because they are really copyright-infringement claims disguised as  
 21 state-law claims. (*Id.*) Defendants assert that removal of state-law claims preempted  
 22 by the Copyright Act has consistently been recognized as routine and proper. (*Id.* at  
 23 ¶ 14.)

24 On December 31, 2013—less than two weeks after the case was removed to this  
 25 Court—Plaintiff filed the FAC. (ECF No. 12.) The FAC is a pared-down version of  
 26 the original Complaint. The FAC contains only nine claims for (1) fraud; (2) false

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27           <sup>1</sup> After carefully considering the papers filed with respect to this Motion, the Court deems the matter  
 28 appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1 promise; (3) civil conspiracy; (4) negligent misrepresentation; (5) intentional infliction  
 2 of emotional distress; (6) conversion; (7) fraudulent transfer; (8) breach of fiduciary  
 3 duty by an attorney; and (9) breach of the duty of undivided loyalty. (*Id.*) All of the  
 4 claims on their face are based on state and common law.<sup>2</sup> Plaintiff alleges that she  
 5 started a business with Defendant Yasmin Nanayakkara in 2008 to design,  
 6 manufacture, distribute, and sell South Asian inspired jewelry. (FAC ¶ 19.) The gist  
 7 of the FAC is that Plaintiff has been deceived over the years regarding the business'  
 8 success, fraudulently inducing her to invest. In addition, according to Plaintiff, she  
 9 was cut out of the business without compensation, and its assets were used to start up  
 10 a new jewelry venture.

11 On January 10, 2014, Defendants filed a Motion to Dismiss First Amended  
 12 Complaint. (ECF No. 13.) Defendants move to dismiss Plaintiff's claims for  
 13 conversion and fraudulent transfer based on Copyright Act preemption. Defendants  
 14 move to dismiss the remainder of Plaintiff's claims on several other grounds.

### 15 III. LEGAL STANDARD

16 Federal courts are courts of limited jurisdiction, having subject-matter  
 17 jurisdiction only over matters authorized by the Constitution and Congress. U.S.  
 18 Const. art. III, § 2, cl. 1; *e.g.*, *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S.  
 19 375, 377 (1994). A suit filed in state court may be removed to federal court if the  
 20 federal court would have had original jurisdiction over the suit. 28 U.S.C. § 1441(a).  
 21 But courts strictly construe the removal statute against removal jurisdiction, and  
 22 “[f]ederal jurisdiction must be rejected if there is any doubt as to the right of removal  
 23 in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The  
 24 party seeking removal bears the burden of establishing federal jurisdiction. *Durham v.*  
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26 <sup>2</sup> Defendants' removal of this action appears to have confused Plaintiff somewhat since she alleges  
 27 in the FAC that this Court has subject-matter jurisdiction under the Copyright Act. (FAC ¶ 16.)  
 28 However, none of the actual claims in the FAC allege violations of the Copyright Act, and Plaintiff  
 vehemently opposes Copyright Act preemption in her Opposition to Defendants' Motion to Dismiss.  
 (ECF No. 14.)

1     *Lockheed Martin Corp.*, 445 F.3d 1247, 1252 (9th Cir. 2006) (citing *Gaus*, 980 F.2d at  
 2       566). Moreover, “[i]f at any time before final judgment it appears that the district  
 3       court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C.  
 4       § 1447(c).

5           Federal courts have original jurisdiction where an action presents a federal  
 6       question under 28 U.S.C. § 1331, or diversity of citizenship under 28 U.S.C. § 1332.  
 7       “The presence or absence of federal-question jurisdiction is governed by the ‘well-  
 8       pleaded complaint rule,’ which provides that federal jurisdiction exists only when a  
 9       federal question is presented on the face of the plaintiff’s properly pleaded  
 10      complaint.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). A plaintiff may  
 11     therefore avoid federal jurisdiction by relying exclusively on state law, since “federal  
 12     jurisdiction cannot be predicated on an actual or anticipated defense.” *Vaden v.*  
 13     *Discover Bank*, 556 U.S. 49, 60 (2009); *see also Hunter v. Phillip Morris USA*, 582  
 14     F.3d 1039, 1042–43 (9th Cir. 2009) (“It is settled law that a case may not be removed  
 15     to federal court on the basis of a federal defense.” (internal quotation marks omitted)).

16           Nevertheless, the complete-preemption doctrine is a corollary to the well-  
 17       pleaded complaint rule. *Metropolitan Life Ins. v. Taylor*, 481 U.S. 58, 63 (1987). Complete preemption “confers exclusive federal jurisdiction in certain instances  
 18       where Congress intended the scope of a federal law to be so broad as to entirely  
 19       replace any state-law claim.” *Dennis v. Hart*, 724 F.3d 1249, 1254 (9th Cir. 2013). Many courts have held that the complete-preemption doctrine applies to the Copyright  
 20       Act. *See, e.g., Dielsi v. Falk*, 916 F. Supp. 985, 993 (C.D. Cal. 1996) (“[P]reempted  
 21       copyright claims can be removed to federal court.”); *Rosciszewski v. Arete Assoc., Inc.*, 1 F.3d 225, 232 (4th Cir. 1993) (“Congress intended that actions pre-empted by  
 22       § 301(a) of the Copyright Act be regarded as arising under federal law.”); *see also* 28  
 23       U.S.C. § 1338 (federal courts have exclusive jurisdiction over copyright claims).

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## IV. DISCUSSION

While Defendants have filed a Motion to Dismiss, the real issue before the Court is a jurisdictional one. Thus, before reaching the merits of Defendants' Motion, the Court must first explain the procedural route it has taken to get there.

This action reached this Court through removal based on federal-question jurisdiction. Removal jurisdiction is analyzed based on the pleadings filed at the time of removal. *Sparta Surgical Corp. v. Nat'l Ass'n of Sec. Dealers, Inc.*, 159 F.3d 1209, 1213 (9th Cir. 1998). Here, that pleading is the original Complaint. Thus, removal jurisdiction is assessed based on that document. But the twist in this case comes in the form of the FAC, which was filed less than two weeks after removal and is now the operative pleading in this action. The Court acknowledges that “[a] plaintiff may not compel remand by amending a complaint to eliminate the federal question upon which removal was based,” but that is not what occurred here. *Id.* Plaintiff has not eliminated the claims upon which removal was based. The FAC still contains two claims that Defendants contend involve a federal question—the conversion and fraudulent-transfer claims. (See ECF No. 13.) While the Court has never addressed the merits of removal based on the original Complaint, the Court finds that it is still proper to address subject-matter jurisdiction based on the FAC. Moreover, the end result—remand of this action—remains the same. See 28 U.S.C. § 1447(c) (“If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.”); cf. *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 351–53 (holding that § 1447(c) gives district courts “wide discretion” to remand actions when only pendent state-law claims remain).

Turning now to the Motion to Dismiss and the substance of the FAC, Defendants seek dismissal of all of Plaintiff's claims, but the Court's priority is the preemption issue with respect to the conversion and fraudulent transfer claims. Complete preemption under the Copyright Act of the conversion and fraudulent transfer claims is the only alleged basis of subject-matter jurisdiction in this case.

1 Plaintiff's other claims are all clearly based on state or common law, and there is no  
 2 diversity citizenship. Therefore, the Court discusses the issue of Copyright Act  
 3 preemption first.

4 **A. Copyright Act Preemption**

5 Section 301 of the Copyright Act preempts and abolishes any rights under the  
 6 common law or state statutes that are "equivalent to copyright and that extend to  
 7 works, within the scope of the Federal copyright law." *Laws v. Sony Music Entm't,*  
 8 *Inc.*, 448 F.3d 1134, 1137 (9th Cir. 2006) (internal quotation marks omitted). The  
 9 Ninth Circuit has adopted a two-part test to determine whether a state-law claim is  
 10 preempted by the Copyright Act. *Id.* A court "must first determine whether the  
 11 'subject matter' of the state law claim falls within the subject matter of copyright as  
 12 described in 17 U.S.C. §§ 102 and 103." *Id.* If so, then the court must decide whether  
 13 "the rights asserted under state law are equivalent to the rights contained in 17 U.S.C.  
 14 § 106, which articulates the exclusive rights of copyright holders." *Id.* at 1138.

15 **1. The "Subject Matter" of Copyright**

16 According to Defendants, the "subject matter" of Plaintiff's conversion and  
 17 fraudulent-transfer claims is jewelry. In the FAC, Plaintiff alleges that Defendants  
 18 converted "money in a specific and identifiable sum and intellectual, proprietary  
 19 information." (FAC ¶ 72.) The fraudulent-transfer claim is premised on Plaintiff's  
 20 rights to "property" from the allegedly failed business partnership between Plaintiff  
 21 and Defendant Yasmin Nanayakkara. (FAC ¶¶ 76–82.) Since the business venture  
 22 giving rise to all of the claims in the FAC involved "designing, manufacturing,  
 23 distributing, and selling South Asian inspired jewelry," Defendants contend that the  
 24 "intellectual, proprietary information" and "property" necessarily refer to jewelry.  
 25 (See FAC ¶ 19; Mot. 24:14–24.) The Court finds this to be a rather strained reading of  
 26 the FAC since there are scant allegations with regard to the actual design of jewelry.

27 Nevertheless, the Court finds that to the extent that the FAC makes allegations  
 28 regarding jewelry design, jewelry design falls within the "subject matter" of

1 copyright. Section 102(a) of the Copyright Act states that the subject matter of  
 2 copyright is “original works of authorship fixed in any tangible medium of  
 3 expression.” Jewelry design fits squarely within this definition under the category of  
 4 “pictorial, graphic, and sculptural works.”<sup>3</sup> 17 U.S.C. § 102(a)(5). It is important  
 5 to note that the scope of preemption under the Copyright Act is actually broader than  
 6 the Act’s protection. *See, e.g., Idema v. Dreamwerks, Inc.*, 162 F. Supp. 2d 1129,  
 7 1189 (C.D. Cal. Sept. 10, 2001); *Firyooze v. Earthlink Network*, 153 F. Supp. 2d  
 8 1115, 1124–25 (N.D. Cal. 2001). Thus, “the work(s) upon which a state law claim is  
 9 based need only be within the ‘subject matter’ of copyright; their actual *protection*  
 10 thereunder is irrelevant to a preemption analysis.” *Idema*, 162 F. Supp. 2d at 1189.  
 11 Accordingly, the Court makes no finding as to whether the jewelry design referenced  
 12 in the FAC is actually protectable under the Copyright Act. The Court only finds that  
 13 jewelry design is within the “subject matter” of the Copyright Act.

## 14        2.     Equivalent Rights

15 More troublesome with respect to this Court’s jurisdiction is the second prong  
 16 of the preemption test. This is where the Court finds that Defendants’ strained reading  
 17 of the FAC—connecting jewelry design to the conversion and fraudulent-transfer  
 18 claims—really loses its shine. The Court must determine whether Plaintiff’s  
 19 conversion and fraudulent-transfer claims are intended to vindicate rights that are  
 20 “equivalent to rights within the general scope of copyright as specified by section 106  
 21 of the Copyright Act.” *Del Madera Props. v. Rhodes & Gardner*, 820 F.2d 973, 977  
 22 (9th Cir. 1987), *overruled on other grounds*, *Fogerty v. Fantasy, Inc.*, 510 U.S. 517  
 23 (1994). In other words, “[t]o survive preemption, the state cause of action must  
 24 protect rights which are qualitatively different from the copyright rights.” *Id.*; *see also*  
 25 *Laws*, 448 F.3d at 1144–45.

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27        <sup>3</sup> Copyright registration forms for the visual arts, available at the United States Copyright Office’s  
 28 website, explicitly reference jewelry design as copyrightable material. *See* Form VA, United States  
 Copyright Office (revised May 2012), <http://www.copyright.gov/forms/formva.pdf>.

1       In this case, the Court finds that the “underlying nature” of the conversion and  
 2 fraudulent transfer claims is not “part and parcel of a copyright claim.” *Laws*, 448  
 3 F.3d at 1144. The gravamen of the FAC is fraud related to an alleged business  
 4 venture involving Plaintiff and Defendant Yasmin Nanayakkara. The other  
 5 Defendants are peripherally involved for allegedly playing various roles in the fraud—  
 6 for example, making false statements to Plaintiff. (*See, e.g.*, FAC ¶ 26.) The thrust of  
 7 the FAC is not the protection of Plaintiff’s intellectual-property rights. While  
 8 copyright preemption does not require a plaintiff’s pleading to include the words  
 9 “copyright,” “infringement,” or even “intellectual property,” it is notable that these  
 10 words are absent from the FAC. Moreover, the allegations in the FAC really boil  
 11 down to a business dispute among the parties. It may be true that some intellectual  
 12 property is involved, but the real controversy here surrounds the existence of a  
 13 business partnership of some kind and whether Plaintiff was continuously misled into  
 14 investing money and resources into the business. At no point in the FAC does  
 15 Plaintiff specifically allege ownership of jewelry designs.

16       The Court has thoroughly reviewed the FAC and finds that in no way are the  
 17 conversion and fraudulent-transfer claims really just copyright-infringement claims  
 18 dressed up as state-law claims. Plaintiff’s allegations involve much more than just  
 19 jewelry design. Defendants’ arguments to the contrary are strained at best.  
 20 Accordingly, the Court finds that the conversion and fraudulent-transfer claims do not  
 21 invoke rights equivalent to copyright.<sup>4</sup>

22       Therefore, the Court **DENIES** Defendants’ Motion to Dismiss with respect to  
 23 the issue of Copyright Act preemption.

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26       <sup>4</sup> The Court recognizes that the Ninth Circuit also applies an “extra elements test” when assessing the  
 27 equivalent-rights prong of the preemption analysis. *See, e.g.*, *Laws*, 448 F.3d at 1144. But the Court  
 28 finds that application of the test to this case is unnecessary because Defendants’ preemption  
 arguments are so tenuous.

1       **B. Plaintiff's Remaining Claims**

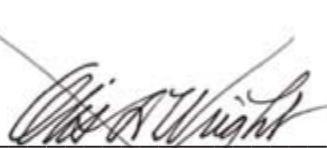
2       Since the Court finds that Plaintiff's conversion and fraudulent-transfer claims  
3 are not preempted by the Copyright Act, there are no claims in the FAC arising under  
4 federal law. Moreover, there is no diversity of citizenship. The Court declines to  
5 exercise supplemental jurisdiction here, particularly since it questions the propriety of  
6 removal in the first place. *See* 28 U.S.C. § 1337. In addition, this case is still in its  
7 early stages, so remand would not unduly prejudice the parties. Accordingly, the  
8 Court **DENIES AS MOOT** the remainder of Defendants' Motion to Dismiss and  
9 **REMANDS** this action to Los Angeles County Superior Court. *See Carnegie-Mellon,*  
10 484 U.S. at 354–55. Nothing in this Order should be construed as prohibiting  
11 Defendants from challenging the sufficiency of the FAC in state court.

12                   **V. CONCLUSION**

13       For the reasons discussed above, the Court **DENIES IN PART** Defendants'  
14 Motion to Dismiss First Amended Complaint on the merits and **DENIES AS MOOT**  
15 the remainder of the Motion. (ECF No. 13.) The Court hereby **REMANDS** this  
16 action to Los Angeles County Superior Court. The Clerk of Court shall close this case  
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18                   **IT IS SO ORDERED.**

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20                   March 4, 2014

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**OTIS D. WRIGHT, II**  
25                   UNITED STATES DISTRICT JUDGE  
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cc: order, docket, remand letter to  
Los Angeles Superior Court, No. BC 527545